IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1761 of 2002

Castrol India Limited .. Petitioner

versus

Anant G. Malik & Anr. .. Respondents

...

Mr.J.P. Cama i/b RMG Law Associates for the petitioner.

Mr.Abhay Kulkarni i/b Pooja Kulkarni for the respondent no.1.

CORAM : D.G. KARNIK,J.

DATED : 27th & 29th June 2005.

ORAL JUDGEMENT:-

1. By this petition, petitioner challenges the award dated 11th June 2002 passed by the learned Industrial Tribunal in reference no. CGIT-50/1997.

2. The respondent no.1 was employed under the petitioner. A charge-sheet was issued by the petitioner to the respondent no.1 on 15th September 1992 alleging the following misconduct :- On 12th September 1992 at about 22.45 hours, the respondent no.1 carried an effigy of M.N. Mehta, Acting Works Manager from the boiler house to the main gate and asked the security supervisor to allow him to go out of the main gate. The supervisor did not allow the respondent no.1 to go out of the factory gate. Thereupon the respondent no.1 tied the effigy to the main gate and threatened and intimated the security supervisor stating that if he dared to remove the effigy he would have to face the consequences. In the charge-sheet mentioned that the aforesaid actions amounted to a misconduct under model standing order no. 24(l) and 24(w) of the State Model Standing Orders. The respondent no.1 sent a reply denying the allegations and contended that he had not committed any of the acts alleged. It was then noticed by the petitioner that for its establishment the appropriate Government was the Central Government and not the State Government as the petitioner was engaged in a

notified industry. The standing orders applicable to the petitioner's establishment were central model standing orders and not the state model standing orders. Reference to the state model standing orders in the charge-sheet dated 15th September 1992 was therefore incorrect. Therefore, by a corrigendum dated 24th September 1992, the petitioner modified the charge-sheet and served the said corrigendum on the respondent. The corrigendum did not alter the factual details of the misconduct alleged against the respondent no.1 but only stated that the actions of the respondent no.1 amounted to a misconduct under clause no.13(3)(a) of the central model standing orders. By a reply dated 26th September 1992, the respondent no.1 replied the corrigendum and again denied the charges. An enquiry Officer was appointed and an enquiry was held against the charges levelled against the respondent no.1 under the charge-sheet dated 15th September 1992 as modified by the corrigendum dated 24th September 1992.

3. Another charge sheet was issued to the respondent no.1 on 1st October 1992 charging that the respondent no.1 had committed another misconduct as follows : On 22nd September at 8.25 a.m. the

respondent no.1 once more carried effigy of Mr.M.N. Mehta chanting the words "Ram Nam Satya Hai", the chanting which is usually recited at a Hindu funeral. Respondent no.1 then incited the workmen not to go to work resulting into the illegally striking work from 8.25 a.m. to 10.00 a.m. The previous enquiry officer was appointed as en enquiry officer for enquiring into the 2nd charge also. After recording of the evidence of the witnesses of the petitioner and respondent no.1 and after hearing them in two separate enquiries, the enquiry officer came to the conclusion that both the charges against respondent were proved. The petitioner issued two separate show cause notices both dated 15th September 1994 to the respondent no.1 calling upon him to show cause why the findings of the enquiry officer should not be accepted and why the punishment of dismissal should not be imposed on him. After considering the replies sent by the respondent no.1, by an order dated 21st September 1994 the petitioner imposed the penalty of dismissal on him. The petitioner challenged the said order of dismissal by a reference under section 10 of the Industrial Disputes Act 1947 (for short "the Act").

4. On hearing reference the respondent no.2 (for short "the Tribunal") came to the conclusion that the first enquiry into the charge under the charge-sheet dated 15th September 1994 as modified by the corrigendum dated 24th September 1992 was defective. As regards the second enquiry under the charge-sheet dated 1st October 1992, the Tribunal held that the finding of guilt recorded was erroneous and perverse. Consequently by an award. Part-I dated 11th June 2002, the Tribunal set aside the order of dismissal passed by the petitioner in pursuance of both the enquiries. The Tribunal observed that since the findings in the domestic enquiries were set aside the petitioner would have to be given an opportunity to substantiate the order of punishment by adducing evidence before the Tribunal. The direction appears to have been given in view of the laws laid down by the Supreme Court in the case of The Workmen of M/s.Firestone Tyre & Rubber Co. of India Pvt.Ltd Versus The Management & ors. reported in AIR 1973 S.C. 1227, wherein it is held that where the order of dismissal has been passed without there being any enquiry or enquiry is found to be defective, an employer can be given an opportunity of adducing evidence for the first time before the Tribunal to

justify its action. This Award Part-I dated 11th June 2002 is impugned in this Writ Petition.

29th June 2005.

5. As stated earlier, two separate enquiries were held. First was in pursuance of the charge-sheet dated 15th September 1992 as amended by the corrigendum dated 24th September 1992. The second was in pursuance of the charge-sheet dated 1st October 1992. A findings of guilts were recorded by enquiry Officer in both the enquiries. So far as the first enquiry was concerned, the Industrial Tribunal held the enquiry to be defective and the findings in the second enquiry to be perverse. In view of the law laid down by the Supreme Court in the case of The Workmen of M/s.Firestone Tyre & Rubber Co. of India P.Ltd Vs. The Management and ors. reported in AIR 1973 SC 1227, the Tribunal was required to allow the petitioner to adduce evidence before it to justify its actions, before passing an order of reinstatement. The Tribunal followed this course and in paragraph no.17 of its order only partially. It permitted the petitioner to adduce evidence but at the same time ordered revocation of the order of

dismissal. The order of the Tribunal is quoted below:

> "The employer shall be given an opportunity to lead evidence in order to retain its case on merits before the Tribunal." It may make a clear statement of its wants to led evidence and file a fresh statement before the Tribunal to what extent it relies on the charge-sheet dated 15th September 1992 and 1st October 1992 so that he be permitted to lead evidence and workmen may rebut it. Accordingly, this part award is given by setting aside the enquiry proceedings based on charge sheet dated 15.9.1992 and 1.10.1992. "Consequently, the order of dismissal dated 21st September 1994 is also stands revoked."

The Tribunal lost sight of the fact that effect of revocation of order of dismissal would be that the petitioner would have to reinstate the petitioner forthwith. If the Tribunal wanted to give further opportunity to the employer to adduce evidence to justify the order of termination by adducing evidence before it, the Tribunal could not have straightway set aside the order of dismissal. It ought to have reserved the direction of setting aside the order of dismissal until Part of the Award was published after permitting the petitioner employer to adduce the evidence to justify its actions. To that extent, the

order of the Tribunal needs to be modified.

Regarding the first enquiry

6. Enquiry was held into the charges against the respondent no.1 in pursuance of the charge-sheet dated 15th September 1992 as amended by the corrigendum dated 24th September 1992. The Tribunal has held that prejudice was caused to the respondent no.1 on account of the amendment of the charge-sheet by the corrigendum. In the first charge-sheet, it was stated that employee had committed a breach of clauses 24(l) and 24(w) of the state model standing orders. By the corrigendum, it was stated that the employee had breached clause no.14(3)(a) of the central model standing orders. The employee therefore would not know whether he was required to defend himself against the charges of breach of the State model standing orders or central model standing orders. This would have caused prejudice to the respondent no.1 in defending himself and therefore the first enquiry was defective. It must be stated here that the respondent no.1 had never complained that he was not able to understand whether the charge against him was for breach of the state model

standing orders or breach of the central model standing orders. He had not complained that any prejudice was caused to him because of the issuance of the corrigendum. After the reference was made by the Government u/s.10 of the Industrial Disputes Act, the petitioner had filed before the Tribunal statement of his claim in writing. With the help of learned counsel for the parties, I have gone through the statement of claim. In the said statement of claim, respondent no.1 has not stated that he had not understood the charge or that any prejudice was caused to him on account of the issuance of the corrigendum dated 24th September 1992. At no stage of the proceedings, the respondent no.1 complained that he had not understood the charge against him. The original charge-sheet as well as the corrigendum have been quoted verbatim by Tribunal in paragraph no.3 of this order. Bare perusal of the charge-sheet shows that the substance of the charge against the respondent no.1 was that he while on duty in "B" shift on 12th September 1992 at about 22.45 hours carried an effigy with the written name of Mr.M.N.Mehta, acting Works Manager from the boiler house to the main gate and asked the security supervisor to allow him to go out of the main gate.

On refusal by the security officer to permit the respondent no.1 to go out of the factory gate, he along with the other employees awaited in the factory gate till the siren was blown and affixed the effigy to the main gate of the factory and threatened and intimidated him. The acts complained of were specific. The acts if proved, amount to a misconduct both under the state model standing orders as well as central model standing orders. It was not the defence of the respondent no.1 that while the acts constituted a misconduct under one model standing order was not a misconduct under the other. His defence was that he had not committed the acts alleged against him and it was not his defence that the acts if proved would not be a a misconduct under either of the standing orders. The respondent no.1 was fully aware of what he was required to defend before the enquiry officer. The enquiry officer, before the proceeding with the enquiry and at the preliminary stage itself, asked the respondent no.1 whether he had understood the charge against him. On the respondent no.1 saying that he had not understood the charge, enquiry officer explained the charge and the allegations against him in Marathi (language spoken and understood by the respondent no.1) and

then asked the respondent no.1 whether he admitted the charges levelled against him to which the respondent no.1 answered in the negative. Thus, it is clear that the respondent no.1 had understood the charges clearly. At the cost of repetition, I may state that even in the statement of claim filed before the Tribunal, respondent no.1 did not claim that he had not understood the charges either on account of corrigendum or otherwise and therefore the enquiry was defective. Thus, the Tribunal made a case for the respondent no.1 which was not pleaded by him. Though the respondent no.1 had never complained that company could not have issued the corrigendum or that any prejudice was caused to him on account of the issuance of a corrigendum. In N.N. Rao Versus Greaves Cotton & Co. & ors. reported in 1973(1) LLJ 81, a Division Bench of this Court has held that where the employee had made no grievance that the charges were vague and indefinite, it could not be held that the charges were vague and indefinite. The respondent no.1 had not complained that he had not understood the charges and had not complained that any prejudice was caused to him on account of issuance of the corrigendum or that prejudice was caused to him because of issuance of the corrigendum

rendering the enquiry to be defective. Therefore, the finding recorded by the Tribunal that the first enquiry was defective on account of the prejudice caused to the respondent no.1 by issuance of the corrigendum has to be set aside.

7. Perusal of the statement of claim filed by the respondent no.1 before the Tribunal shows that he had contended that he was being victimised for being an active member of an union. He had further contended that enquiry was defective because he was not allowed to cross-examine Mr.T. Nandae. The Tribunal has not recorded any finding on these contentions. These contentions are again pressed before me by learned counsel for the respondent no.1. In the circumstances, it is necessary to remand the matter back to the Tribunal for decision on these contentions.

Regarding the second enquiry:

8. Second enquiry was held against the respondent no.1 in pursuance of the charge-sheet dated 1st October 1992 regarding the alleged misconduct committed by him on 22nd September 1992.

The Tribunal has held that the finding of guilt recorded in the second enquiry by the enquiry officer was perverse. The Tribunal has held that the application of mind by the enquiry officer was superficial, the statement of witnesses were believed without discussing their reliability on the touch tone of normal course of events. Learned counsel for the petitioner was at pains to point out that the Tribunal has also not considered the evidence of the various witnesses adduced before the enquiry officer, before it came to the conclusion that the findings recorded by enquiry officer were perverse. Learned counsel submits that the Tribunal wholly erred in law in coming to the conclusion that the findings of the enquiry officer were perverse. Counsel relies upon three decisions viz. i) In J.D. Jain Vs. The Management of State Bank of India & Anr. reported in AIR 1983 S.C. 673 (ii) Bank of India Vs. Degala Suryanarayana reported in 1999 II CLR 465 and iii) M/s.Banaras Electric Light and Power Co. Ltd. Vs. The Labour Court II, Lucknow & Ors. reported in 1972(2) LLJ 328, which explain which evidence is admissible in a domestic enquiry and when a finding can be said to be perverse.

9. The Supreme Court relying upon its earlier judgement in J.D. Jain Vs. The Management of State Bank of India (Supra) the Supreme Court held that in a domestic enquiry, strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.

10. In Bank of India Vs. D. Suryanarayana (Supra) the Supreme Court reiterated that the strict rules of evidence are not applicable to the departmental enquiry proceedings. The only requirement of law is that the allegation against delinquent Officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture of surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case

of malafides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

11. In M/s.Banaras Electric Light and Power Co. Ltd. Vs. The Labour Court (II) (Supra), the Supreme Court held that the findings recorded by the enquiry officer cannot be regarded as perverse unless they were not supported by evidence or entirely opposed to the whole body of evidence adduced before it. In paragraph 4 of the judgement, the Court observed :

> "This Court in several cases while dealing with industrial disputes of this kind, had occasion to point out that an Industrial Tribunal would not be justified in characterising the finding recorded in the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced before it. In a domestic inquiry once a conclusion is deduced from the evidence, it is not

> permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence."

12. From the aforesaid judgements of the Supreme Court, it is clear that an enquiry officer is not bound by strict rules of evidence contained in the Indian Evidence Act. An enquiry officer is entitled to receive as evidence materials which may not strictly amount to an evidence within the meaning of the Indian Evidence Act. As long as the evidence produced before the enquiry officer is such that any person acting reasonably would be inclined to look into it, the enquiry officer would be justified in looking into that evidence. There is however a difference between an admissibility of the evidence and its probative value. An evidence which may not be strictly be admissible before a court of law bound by the rules contained in the Indian Evidence Act may be admissible before an enquiry officer conducting a departmental enquiry. However the mere fact that the evidence is admissible does not mean that the evidence has to be believed. The enquiry officer is required to scan the said evidence and consider its probative value, whether the evidence is sufficient to prove a

particular fact or not. The enquiry officer may not consider every piece of evidence in isolation but he may consider the cumulative effect of the entire body of evidence produced before him. If the enquiry officer comes to a particular finding on the basis of a cumulative consideration of the whole body of evidence produced before him and the finding reached by him is such that any person could have arrived at such a finding i.e. to say that the finding is a possible finding, the said finding cannot be said to be perverse. The mere fact that the Tribunal if were to appreciate the evidence for the first time could have reached a different finding is no ground to hold that the finding of an enquiry officer is perverse. To dub a finding as perverse, it must be based on no evidence or must be such that no man on the basis of the whole body of evidence produced before him would have reasonably reached such finding.

13. Mr. Cama is a right in his submission that though that several adjectives have been used for reversing the findings recorded by the enquiry officer, there has been little discussion of the actual evidence before the enquiry officer, in the judgement of the Tribunal. A conclusion that the

findings of an enquiry officer are perverse is harsh and normally should not be reached unless it is shown that the findings are based on no evidence or are such that no reasonable person acting reasonably would have reached them on the basis of the whole body of evidence before the enquiry officer. Merely saying in the judgement that no reasonable person would have reached the said findings is not enough. It is necessary to give sufficient and cogent reasons why the Tribunal considers that the findings are such that no reasonable person acting reasonably would have reached them on consideration of the whole body of evidence. I am unable to find sufficient reasons recorded by the Tribunal for dubbing the findings of the enquiry officer in the second enquiry to be perverse. In the circumstances, the matter has to be remanded for reconsideration to the Tribunal on this aspect also. The Tribunal is required to reconsider as to whether the findings recorded by the enquiry officer in the second enquiry were based on no evidence or were such that no reasonable person acting reasonably would have reached the said conclusions on the basis of the whole body of evidence adduced on record. If the Tribunal still comes to the conclusion as to the perversity, it must clearly record the

reasons for the same.

14. In the circumstances, petition has to be allowed in part. The impugned order is set aside and the matter is remanded back to the Tribunal in reconsideration in the light of observations made above. Rule made absolute to the extent mentioned above.

D.G. KARNIK, J